

# Contemporary Comment

## *An Overview of Current Initiatives to Improve Child Witness Interviews about Sexual Abuse*

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### ***Abstract***

This comment provides an overview of the main barriers to eliciting quality evidence from child witnesses in sexual abuse cases and recent attempts within several Australian jurisdictions to overcome these barriers. The comment takes a constructive approach. Recommendations relate to five themes: adoption of a narrative framework, quality of training, interviewer workplace climate, prosecutor feedback, and ongoing case tracking and evaluation. While the focus is on child witnesses, the recommendations also apply to other vulnerable witnesses and adults.

### **Adoption of a narrative interview framework**

There is an Aesop fable about ‘killing the goose that laid the golden eggs’, which conveys a lesson that applies well to interviewing children. The lesson is that short-sighted and aggressive attempts to elicit outcomes quickly can destroy the profitability of a valued asset. In the case of interviewing child victims or witnesses of sexual abuse, the golden egg (asset) is the child witness statement, which in ideal form is a coherent, detailed disclosure of abuse, incorporating elements needed to prove the offence (what happened and who did it). The analogy with the fable is that the child (like the bird) can only provide what is required when handled with understanding, consideration, patience and care. If the interviewer tries to outreach himself or herself and demand too much (for example, demanding specificity of detail that the child is not developmentally capable of providing) he or she risks losing everything, just as the short-sighted farmer lost everything when he killed his goose in the process of trying to increase the bird’s level of production.

The primary challenge when interviewing child witnesses is knowing what level of demand is too much. Children as young as three or four years old can remember and report events with enough clarity and accuracy to assist triers of fact in rendering a verdict (Hershkowitz et al 2012). Despite their strengths, however, child witnesses (like adults) sometimes make errors. Since the 1970s, eyewitness memory research has focused on

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understanding how limitations in social, linguistic and cognitive capacity affect the ability to understand questions, remember details, and provide reliable answers (Powell et al 2009). This research has also helped to identify ways to maximise the amount and accuracy of information obtained.

One way of maximising the detail and accuracy of child witness statements is to provide an environment where the witness feels heard and understood, and not judged (Powell and Cauchi 2011). Any sense of disbelief, threat or intimidation must be reduced as much as possible without making the process (or the child) seem frivolous. Australian jurisdictions have done well at addressing the intimidating courtroom environment by providing alternative means by which children can give evidence (for example, enabling videotaped statements to be used as evidence in chief, implementing closed-circuit television: Richards 2009). Professionals' stereotypes or misconceptions about how sexual offences occur (associated with attitudes of scepticism and disbelief towards victims when victim reports do not fit stereotypes) are being addressed by providing stronger focus in police training courses on the dynamics and prevalence of sexual assault. For example, the foundation training for Victorian police investigators who specialise in sexual assault now centres on the premise that appropriate decision-making of investigators, jurors and legal professionals requires an understanding not only of *what* occurred — the offence and physical context — but also *how* the victim came to be in the situation and to respond the way he or she did. These *how* details are elicited by direct inquiry about the offender–victim relationship and the events that occurred leading up to the offence. Greater focus on relationship and grooming details has been shown to decrease judgments of victim responsibility among police detectives and to increase the likelihood that cases of sexual abuse will be authorised for prosecution (Darwinkel, Powell and Tidmarsh 2013b).

Another way of enhancing evidential quality is to use a questioning style that maximises narrative detail. In the eyewitness research arena, all 'roads of inquiry' lead to the importance of using non-leading, open-ended questions, particularly when interviewing vulnerable witnesses. Open-ended questions encourage elaborate detail without dictating what specific information is required (Powell and Snow 2007). When considering response accuracy, open-ended questions minimise individual differences in responding arising from variability in memory, language and social skills (Agnew and Powell 2004). All witness groups respond with high accuracy to open-ended questions, and the decline in accuracy in response to specific 'Who? What? When? Where?' ('Wh') questions, compared to open-ended questions, is greater for vulnerable witnesses.

When comparing the effect of questions using a range of other criteria (not just accuracy), open questions still retain superiority. Open-ended (compared to specific 'Wh') questions have many benefits: they elicit longer responses (Sternberg et al 1996); they encourage witnesses to play an active role in the interview process (Roberts et al 2004; Sternberg et al 1996); they enhance witnesses' perceptions that they were listened to (Eastwood and Patton 2002); they maximise story-grammar and victim credibility (Feltis et al 2010); they elicit more temporal attributes (Orbach and Lamb 2007); they reduce the negative consequences of interviewer confirmation bias (Powell, Hughes-Scholes and Sharman 2012); and they assist in detecting deception (Vrij et al 2011).

Not all open-ended questions, however, are equivalent in their effectiveness at eliciting narrative detail. The best open-ended questions are those that (coupled with non-verbal encouragers) direct the witness to the evidential detail required, minimise defensiveness and anxiety, overcome the witness's natural tendency to suppress information, avoid raising information that has not yet been established, and encourage coherency and elaborate detail

(Powell and Guadagno 2008). While over a decade ago experts thought that children's responses to open questions (while accurate) were lacking in detail, research now indicates that gentle persistence with well-phrased, non-leading, open questions (particularly those that use children's responses as cues for further information) can result in extensive or contextually elaborate accounts, even among very young children. Maximising narrative detail must therefore form the basis of interview protocols, even for witnesses with limited memory and language abilities (Powell, Mattison and McVilly 2013).

The importance of narrative detail is recognised by victims, judges and prosecutors as well. The following quotes (elicited through qualitative interviews) typify the perceptions of these groups:

- 'My ideal type of (police officer) would be someone who you go to talk to and you can tell them anything and they'll listen.' (Sexual assault victim: Powell and Cauchi 2013.)
- 'I liked talking to [the open-ended interviewer] because she heard me very well; like she asked less questions and I got to say everything I remembered.' (Seven-year-old: Guadagno and Powell 2012.)
- 'You know from stories yourself, you like to hear the beginning, the middle and the end ... You don't like people constantly butting in and saying, "Yeah, but what about the ... what about the" ...' (Judge: Guadagno et al 2006.)
- 'On an evidentiary basis, one of the best things from a jury perspective is having the kids come out with that initial explanation of what happened — unprompted or undirected. That very natural free-flowing narrative that describes what happened to them on that particular day. It seems more truthful and it gives the interview an authenticity that it wouldn't necessarily have if it was broken up constantly into questions and answers.' (Crown Prosecutor: Burrows and Powell 2013.)

The impact of narrative interviewing on trial outcome is supported by a study funded by the United States Department of Justice, which shows that charges of child abuse are more likely to be filed for cases where the interviewer adhered to a narrative interview protocol (Pipe et al 2008). It is also supported through prosecutor feedback about the strengths and limitations of child witness interviews about abuse (Burrows and Powell 2013).

## Quality of training

Regardless of whether organisations subscribe to narrative-based protocols, interviewers struggle to adhere to them. Nearly all evaluations of investigative interviewer performance around the world have indicated that while interviewers generally start with a good open question, they have trouble maintaining these questions throughout the interview (see Powell et al 2005 for review). Interviewers frequently interrupt the narrative account with specific 'Wh' questions.

Poor adherence to the usage of open-ended questions is the result of inadequate training. Like any complex practical skill, good questioning comes from specialised training programs incorporating ongoing spaced practice exercises (in contexts that would normally provoke an inappropriate action), exemplars of best practice, expert instruction and feedback. Most interviewer training programs across the globe have not included these elements. Programs generally provide the theoretical context and a broad interview

framework, but fall short when it comes to identifying necessary sub-skills, explaining *what* interviewers need to achieve and how they will achieve it, and monitoring performance development (Powell 2008). The training needs to be ongoing. Researchers have demonstrated this by tracking an increase in interviewers' use of open questions with the adoption of practice opportunities and a decline in performance following a period of time after practice has ceased (Powell et al 2008). Poor training quality is tolerated when there is no common standard or watchdog overseeing the curriculum-development process (Powell 2008). In many jurisdictions, the role of developing interview protocols is left in the hands of operational staff who have little expertise in investigative interviewing procedure and human learning, little accountability, and limited tenure as training coordinators.

Restraints in budget, training time and expertise of training coordinators are not legitimate excuses for providing inadequate training. There is a wealth of expertise and resources in this country (for example, standardised measures of performance, instruction videos and practice exercises), which has been shown in empirical research to be associated with best-practice performance (Powell, Fisher and Hughes-Scholes 2008; Powell and Wright 2008; Yui, Powell and Guadagno 2012). Such resources can be packaged together using online learning technologies to form cost-effective, individually tailored training programs for jurisdictions. Developments in telecommunication, for example, allow individual collaboration between students and instructors. Computer-managed instruction (which can provide instant student feedback) and online communication forums (which eliminate the complications associated with face-to-face relationships) are resulting in education models that are far more effective than traditional 'chalk and talk' classroom-based instruction. Block training (where all instruction, practice and feedback is delivered in a short space of time) is a not a good investment, as most of the gains disappear within three months (Smith et al 2009).

## Interviewer workplace climate

Child abuse investigation is often conducted in a complex workplace climate, which can (in some conditions) impede good interviewer performance. Forced job rotation undermines specialisation (Powell and Tomin 2011; Powell and Wright 2009). High workload demands and inter-agency collaboration are barriers cited by professionals as being far bigger stressors than exposure to horrific case content (Powell, Guadagno and Cassematis 2012; Wright et al 2006). The source of stress is not workload or interagency collaboration per se; it is the absence of processes to facilitate effective inter-agency collaboration, and low levels of self-efficacy among interviewers, who feel they have limited value within their organisations and the justice system. High workload does not concern professionals as much when their efforts are recognised and appreciated by management. The following quote typifies the low morale often felt in this area of work:

When people don't believe what you do is challenging then there are no checks and balances and so things deteriorate over time. Lack of specialised training, lack of resources and lack of skilled workers leave many workers feeling overwhelmed about the process that needs to be followed ... Part of the problem is individual apathy. There is no external incentive to lift your game because the organisation doesn't really think it's a difficult task. People feel unsupported by the system and are often disheartened (Powell, Guadagno and Cassematis 2012).

The importance of addressing negative workplace climate is heightened in the area of child abuse investigation because there are few overt signs of success from which to glean a sense of self-efficacy and work satisfaction. Few child sexual abuse cases go to court and

when they do professionals are usually not informed of the outcome or their role in facilitating it.

Police executives (who oversee performance at the investigative stage) and members of the judicial system (who have the power to protect children from unfair cross-examination) undermine the importance of interviewing when they tolerate poor questioning of child witnesses and put the onus on the child witness rather than the questioner to demonstrate competency. The focus should not be on the reliability of the child witness per se, rather, on the reliability of the child's statement considering the manner in which the statement was obtained. Credibility assessment — using techniques that analyse behaviour or speech — has limited scientific validity with children and its inclusion in court reports propagates myths that lying is commonplace among these witnesses (Vrij et al 2011). The word 'lie' implies an intention to deceive, where the reality is that when a child misreports events, it is usually due to the nature of the question asked or because the child misunderstands the purpose of the question. Unintentional memory errors (due to complying with the perceived demand of the interview situation or inappropriate questions) usually account for inaccurate child witness testimony, rather than intentional deception.

## **Prosecutor feedback**

Developing interview protocols and questioning strategies (to elicit accurate, detailed and coherent statements from child witnesses) requires considerable expertise. Prominent interview protocols have been developed by academics with expertise in human language, memory, and child development, and these protocols have been subsequently evaluated using laboratory designs to examine their effect on interviewee accuracy and detail (Powell, Garry and Brewer 2009). However, given that child witness statements form the main evidence at a trial, expertise in the prosecution process is also required. Prosecutors' feedback needs to be elicited about the use and application of electronically recorded child witness interviews as it provides an important benchmark for interview quality.

Although prosecutors have (in the past) played a limited collaborative role in the interview development process, this is an area where there has been considerable development in Australia over the years. Specifically, detailed feedback has been sought from individual prosecutors about the strengths and limitations of child witness interviews, along with suggestions for how the interviews could be improved from a prosecution perspective. In one recent study (Burrows and Powell 2013), where feedback was sought via 36 phone interviews conducted with trial prosecutors shortly before and after child abuse trials, three recommendations for improvement were generated. First, prosecutors perceived that interviewers need to become better attuned to the evidential details required for successful prosecution of child sexual assault cases. It appears that interviewers have been overestimating the amount of contextual and time-related information that is required. Second, interviewers need to prioritise the elicitation of a cohesive narrative account of the offending from the witness perspective, as opposed to using mainly short-answer questions, and focus more on how the child will present in the eyes of the jury. Finally, while prosecutors support electronic recording of child witness statements as evidence in chief at the trial, they believe there needs to be scope to supplement these interviews with additional live witness evidence.

Responsibility for addressing prosecutors' concerns (via revision of questioning procedures) must rest in the hands of child witness experts who understand children's

developmental capabilities, know how to translate concerns into the interview protocols, and can implement research to evaluate the impact of new techniques to ensure they do not undermine the accuracy and detail of a child's account. The voice of the prosecutors, however, is critical to the process. Prosecutors can assist with the development of formalised principles about how and when to elicit descriptive information about the child–perpetrator relationship, how to clarify terms for genitalia and sexual acts, and the degree and nature of detail required about the timing of the offence (Burrows and Powell forthcoming; Darwinkel, Powell and Tidmarsh 2013b). Research is also underway to develop ways to better prepare children for the interview and trial processes and to enhance their resilience.

## Ongoing case tracking and evaluation

Finally, to improve the quality of child witness interviews about sexual abuse, researchers and practitioners need to better understand how the justice system is functioning as a whole. Interviews cannot be considered in isolation because a range of aspects within investigation and case-management processes can have an impact on the performance of interviewers and the quality and use of the evidence obtained. For example, victims' engagement in the system, and the incidence and detail of their disclosures regarding abuse, are affected by many factors. These include the degree of victim support and methods of engaging families and communities; service providers' knowledge and prioritisation of sexual assault investigation; the physical location of services; the immediacy of service providers' responses; levels of coordination across agencies; strategies for referring children for therapeutic intervention; incorporation of cultural knowledge into service delivery frameworks; processes for dealing with professional work-related stress; and criteria used to refer cases of abuse for potential prosecution (Mace and Powell 2012; Powell et al forthcoming; Powell and Cauchi 2013; Powell, Murfett and Thomson 2010; Powell and Wright 2012).

Quality-control evaluation has been lacking in child protection systems across the globe, constraining answers about the impact of certain procedures and evidence-based decisions about policy and procedure (Hoyano and Keenan 2007). System evaluation requires three interrelated components. First, a national curriculum needs to be developed dictating what constitutes an appropriate interviewer training program and how training delivery should be assessed, evaluated and accredited. If (as a nation) we embrace an evidence-based practice approach, organisations cannot continue to work independently. Legislation relating to the use of investigative interviews and the admissibility of interview evidence differs across jurisdictions, but core interview techniques do not. Given the considerable expertise and resources in this area, it would also make sense to develop a centralised hub where training resources and services related to investigative interviewing can be easily accessed by organisations on a needs basis.

Second, good evaluation requires the utilisation of objective measures of interviewer performance. Unless performance is tested with objective output, it cannot be concluded that training or reforms have had a positive impact on interviewer performance. Aside from the issue of rapport, participants' perceptions have limited correlation with actual interview performance (Wright and Powell 2006). Mock interviews with trained actors following standardised rules for playing the child are now routinely used in evaluation research (Powell et al 2008; Sharman et al 2012; Yui, Powell and Guadagno 2012). They should be a routine part of training as well.

Finally, good quality-control evaluation requires the application of a contemporary and comprehensive tracking system for child abuse cases. One jurisdiction (Western Australia) has made great strides toward addressing this need. Professionals involved in each referred case of child abuse enter information into a centralised database. Data is collated from the point of initial complaint to the point where the case cannot proceed further. A wide range of case-related detail is recorded, including abuse and referral type, victim and suspect relationship and demographics, maltreatment history, case file allocation, and the outcome of investigations, including victims' and suspects' interviews.

The importance of case tracking is that it enables evidence-based decisions to be made about how to improve child abuse-related policy and procedure. Better understanding of how the system is operating is a logical prerequisite to identifying the reason for system deficiencies and developing and trialling practical strategies aimed at improving existing procedures. Past evaluations of child protection and criminal justice systems have not featured these elements because they relied on retrospective data collection. Retrospective data is limited due to incomplete recording of information by the multiple agencies involved, databases not being linked, and inconsistencies in the identifiers and coding schemes used by agencies to capture case information. As a judge reported:

A great source of frustration for all of us working in this area is that most of our knowledge on the outcome of cases is anecdotal. We need statistics so that we can actually measure all these reforms. We need to know if they're not working and if so, determine why (Powell and Wright 2009).

Importantly, contemporaneous case tracking enables researchers to move beyond descriptive analyses and to examine how a wide range of factors related to the interview, cases and system in general interact to produce various outcomes for child complainants of abuse and the quality of evidence obtained from them.

## Conclusion

The elicitation of an elaborate and accurate account of sexual abuse from a child is a complex process that depends on several important interviewer skills. These skills include the ability to use open-ended questioning strategies to maximise narrative detail and to minimise a sense of disbelief, threat and intimidation without making the interview process appear frivolous. Organisations can facilitate the establishment of these skills by switching to work-based interviewer training models (incorporating spaced practice and feedback), investing in quality-control evaluation (through case tracking), addressing negative workplace climates, and encouraging prosecutor feedback about the use and application of electronically recorded child witness interviews.

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